

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

08CR 2721-L

UNITED STATES OF AMERICA,

Plaintiff,

v.

Gilberto Brian VILLANUEVA,

Defendant.

Magistrate Case No. 08MJ8653

**FINDINGS OF FACT AND
ORDER OF DETENTION**

In accordance with § 3142(f) of the Bail Reform Act of 1984 (18 U.S.C. § 3141 et seq.), a detention hearing was held on July 22, 2008, to determine whether defendant Gilberto Brian VILLANUEVA, should be held in custody pending trial on the grounds that he is a flight risk. Assistant U. S. Attorney John F. Weis appeared on behalf of the United States. Diane Regan of Federal Defenders of San Diego, Inc. was relieved as counsel for Defendant and newly retained counsel Arturo HERNANDEZ-Melendez, appeared on behalf of the Defendant.

Based on the evidence proffered by the United States and the Defendant, the Pretrial Services Report, and the criminal complaint issued against the Defendant on July 17, 2008, by this Court, the Court concludes that the following facts establish by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the Defendant required.

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I

FINDINGS OF FACTA. Nature and Circumstances of the Offense Charged (18 U.S.C. §3142(G)(1)

1. The Defendant is charged in Criminal Complaint No. 08MJ8653 with the importation of 16.38 kilograms (36.03 pounds) of cocaine in violation of 21 U.S.C. § 952 and 960. Therefore, probable cause exists to believe the Defendant committed the charged offense.

2. The charged offense is an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Uniform Controlled Substances Act (21 U.S.C. § 801 et seq.). Thus, there arises a presumption that no condition or combination of conditions will reasonably assure the appearance of the Defendant as required. See 18 U.S.C. § 3142(e).

3. The offense carries with it a minimum mandatory 10 year sentence and a maximum life sentence. See 21 U.S.C. § 960(b)(1)(B). According to the United States Sentencing Guidelines, the Base Offense level is 34. See USSG § 2D1.1. Assuming the Defendant's criminal history score places him in Criminal History Category IV, See USSG § 4A1.1., the sentencing range for the Defendant is 210-262 months in prison.

B. Weight of the Evidence Against the Defendant (18 U.S.C. § 3142(g)(2):

1. On July 16, 2008, Defendant was the driver, sole occupant, and registered owner of a 2003 Chevrolet Silverado as he entered the United States at the Calexico, California, West Port of Entry. During pre-primary inspection, a Narcotic Detector Dog alerted to the vehicle. CBPO Tavizon escorted Defendant to the vehicle secondary lot for further inspection. Further inspection of the vehicle resulted in the discovery of 16.38 kilograms (36.03 pounds) of cocaine concealed inside a specially-built compartment under the center console.

C. History and Characteristics of the Defendant (18 U.S.C. § 3142(G)(3):

1. The Defendant is a United States citizen.
2. The Defendant resides in Bakersfield, California.
3. The Defendant has family residing in the United States.
4. The Defendant is employed as an electrician/computer technician.

D. Nature and Seriousness of Danger Posed by Release (18 U.S.C. § 3142(g)(4):

1. The government proffered no evidence to suggest that release of the Defendant would pose a danger to any person or the community. The Defendant has the following criminal history:

01/28/99 – 245(a)(1) PC Force/ADW-Not firearm:GBI likely – Disposition Unknown

09/13/99 – Ct 1: 245(A)(1) PC Force/ADW not firearm:GBI likely – Dismissed/furtherance of Justice
Ct 2: 2001(A) VC Hit & Run:Death or Injury – Dismissed/furtherance of Justice
Ct 3: Misdemeanor unknown charge - 20 days jail, 36 months probation

07/01/01 – 273.5(A) PC Inflict Corporal Injury spouse/cohab – Disposition Unknown

08/19/03 – Ct 1: Misd 243(E)(1) PC Batt:noncohab former spouse/etc – convicted
Ct 2: Misd 236 PC False imprisonment – convicted
Sentence: 20 days jail, 3 years probation

02/28/04 – Ct 1: BW 236 PC False imprisonment
Ct 2: BW 243(E)(1) PC Batt:noncohab former spouse/etc

10/07/04 – Warrant 236 PC False imprisonment
Warrant 243(E)(1) PC Batt:noncohab former spouse/etc

03/01/06 – Ct 1: 243 (E)(1) PC Bat:Spouse/ex sp/date/etc; Ct 2: 236 PC False imprisonment
Sentence - 40 days jail

03/17/06 – Ct 1: 148.9(A) PC False ID to specific Peace Officer
Sentence: 25 days jail, 3 years probation, \$155 fine
Ct 2: 273.5(A) PC Inflict corporal injury:spouse/cohab
Sentence: 1 month jail work, 3 years probation

04/14/06 – Misd 14601.1(A) VC Drive while license suspended/etc –
Sentence: 43 days jail, 3 years probation, \$155 fine

04/26/06 - 273.6(A) PC Viol Court Order to prevent domestic violence

05/10/06 - Ct 1: Court Remand 273.6(A) PC Viol Crt ord to prevent domestic violence
Ct 2: Court Remand 148.9 PC False ID to Peace Officer
Ct 3: Court Remand 273.5(A) PC Inflict corporal inj:spouse/cohab
Ct 4: Court Remand 243(E)(1) PC Bat:Spouse/ex sp/date/etc
Ct 5: Court Remand 236 PC False imprisonment

05/10/06 - Convicted Arrested on a Court Remand Misdemeanor Count - 25 days jail, 3 years probation;
\$555 fine

10/27/06 – 460(B) PC Burglary:2nd degree - Disposition Unknown
484G PC Theft by use of access card data - Disposition Unknown

12/07/07 – Ct 1: 422 PC Threaten crime w/intent to terrorize - pending in Bakersfield
Ct 2: 594(B)(1) PC Vandalism - pending in Bakersfield
Ct 3: 10851(A) VC Take veh w/o own consent/ veh theft - pending in Bakersfield
Ct 4: 243(E)(1) PC Bat:Spouse/ex sp/date/etc - pending in Bakersfield
Ct 5: 591 PC Damage/etc power line - pending in Bakersfield

12/13/06 - Bakersfield Superior Court
- Convicted 1 year jail, 3 years probation

07/24/08 - Request Warrant Abstract (Bakersfield Superior Court)
Ct 1: Felony 273.5(A) PC Inflict Corporal Injury on spouse/cohabitant
Ct 2: Felony 422 PC Threaten with intent to terrorize
Ct 3: Felony 664/187(A) Attempted Murder
- Released \$50,000 surety bond
- Next Court Date: 09/05/08

II

REASONS FOR DETENTION

A. There is probable cause to believe that the Defendant committed the offense charged in Criminal Complaint Number 08MJ8653, to wit: the importation of 16.38 kilograms (36.03 pounds) of cocaine in violation of 21 U.S.C. §§ 952 and 960.

B. The Defendant faces a substantial period of time in custody if convicted of the offense charged in the Complaint. He therefore has a strong motive to flee.

C. The Defendant has not rebutted the presumption, based upon the Court's findings, that there is probable cause to believe that the Defendant committed an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. § 801 et seq.), and that no condition or combination of conditions will reasonably assure the appearance of the Defendant at future court proceedings.

III

ORDER

IT IS HEREBY ORDERED that the Defendant be detained pending trial in this matter.

IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The Defendant shall be afforded reasonable opportunity for private consultation with counsel.

1 While in custody, upon order of a court of the United States or upon the request of an attorney for
2 the United States, the person in charge of the correctional facility shall deliver the Defendant to the
3 United States Marshal for the purpose of an appearance in connection with a court proceeding or any
4 other appearance stipulated to by defense and government counsel.

5 THIS ORDER IS ENTERED WITHOUT PREJUDICE.

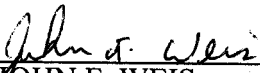
6 IT IS SO ORDERED.

7 DATED: 8-12-08

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10 PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE

11 Prepared by:

12 KAREN P. HEWITT
United States Attorney

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14 
15 JOHN F. WEIS
Assistant U. S. Attorney

16 cc: Arturo HERNANDEZ-Melendez
17 Counsel for Defendant